

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	Docket No. 02-0426
)	
Adoption of 83 Ill. Adm. Code Part 732.)	

BRIEF OF VERIZON NORTH INC.
AND VERIZON SOUTH INC.

Verizon North Incorporated and Verizon South Incorporated (collectively “Verizon”) respectfully submit this Brief to the Illinois Commerce Commission (“ICC” or “Commission”) addressing certain legal issues concerning Code Part 732 (“Part 732”). 83 Ill.Adm.Code 732.

I.
Executive Summary

The Administrative Law Judge (“ALJ”) has requested that the parties to this proceeding respond to two legal questions prior to embarking upon a procedural schedule for the development of testimony and subsequent evidentiary hearings. (Tr. p. 8). These questions are:

Is the Commission preempted from having a rule which grants carriers an exemption from that rule [Part 732] in the event of strikes and/or work stoppages? and,

Does Section 13-712 of the Act preclude the Commission from having a rule which grants carriers an exemption from that rule in the event of strikes and/or work stoppages?

(*Id.*) The answer to each of these questions is no.

As will be demonstrated below, the Commission is not preempted from excluding strikes or work stoppages from credit requirements. In fact, the opposite is true. Strikes

and work stoppages are subject to the National Labor Relations Act (“NLRA”). 29 U.S.C. §§151 *et seq.* If a telecommunications carrier was required to pay customer credits during a strike or work stoppage, that result would violate the NLRA. While it is Verizon’s position that all strikes and work stoppages should be exempted from the credit requirements of Part 732, Verizon does not object to the existing 90-day period for an exemption found in the current rule.

Turning to the second question, Section 13-712 of the Public Utilities Act (“the Act”) explicitly provides the Commission with the discretion to determine what an “emergency situation” is for purposes of Part 732. 220 ILCS 5/13-712(e)(6)(iii). Clearly, the General Assembly left it to the Commission to determine the scope of the term “Emergency Situation.” It is well within the scope of Section 13-712 for the Commission to determine that strikes or work stoppages are emergency situations.

II. Argument

Part 732 establishes when a telecommunications carrier must provide credits to its customers related to the installation or repair of basic local exchange service, as well as requirements for meeting customer appointments. The requirements for such credits come directly from Section 13-712 of the Act. The issuance of such credits, however, is not without limit. Under Section 13-712, there are various exemptions from paying credits, including when an emergency situation arises. 220 ILCS 5/13-712(e)(6)(iii). Under Section 13-712, the General Assembly has given the Commission discretion to determine that an emergency situation includes strikes and work stoppages. Federal law does not preempt the Commission from making such a determination. Indeed, if the Commission failed to include strikes or work stoppages as emergency situations and

required carriers to pay credits during such events, such a determination would violate the NLRA.

A. The Commission Is Not Preempted From Including Strikes Or Work Stoppages Within The Definition Of Emergency Situation

The enactment of Section 13-712 was for the benefit of customers, not labor unions. Under Section 13-712 customers are to be issued credits if certain service standards are not met. 220 ILCS 5/13-712. Recognizing that there may be extenuating circumstances that may impact the provision of service, the General Assembly provided for certain exemptions to the requirement to issue credits customers. 220 ILCS 5/13-712(e)(6)(iii). Importantly, absent the requirements of Section 13-712 and the resulting Part 732, such credit requirements would not exist. Federal law does not otherwise demand that telecommunications carriers in Illinois to pay credits to customers even when a strike or work stoppage takes place.

The National Labor Relations Board (“NLRB”), not the states, has jurisdiction to regulate collective bargaining (so-called *Garmon* preemption). The *Garmon* preemption, first articulated by the United States Supreme Court in *San Diego Blg. Trades Council v. Garmon*, 359 U.S. 236, 244-45 (1959), “forbids state and local regulation of activities that the NLRA protects or prohibits or arguably protects or prohibits.” *See Cannon v. Edgar*, 33 F.3d 880, 884 (7th Cir. 1994) (citing *Building and Trades Council v. Associated Builders and Contractors of Massachusetts/Rhode Island*, 507 U.S. 218 (1993)). The *Garmon* doctrine prevents conflicts between state and local regulation and the federal regulatory scheme embodied in the NLRA. *See Cannon*, 33 F.3d at 884. The *Cannon* court explained that the NLRA is an extensive statutory scheme that regulates the collective bargaining relationship between employers and unions. *See Cannon*, 33

F.3d at 883. Among other things, the NLRA enumerates unfair labor practices by both employees and employers, 29 U.S.C. § 158(a) and (b); it defines as an unfair labor practice the refusal by an employer to bargain collectively with a labor union representing its employees. *See* 29 U.S.C. §158(a)(5). The NLRA, however, does not require that the parties reach agreement. *See Cannon*, 33 F.3d at 884. Rather, with the exception of requiring parties to bargain in good faith, 29 U.S.C. §158(a)(5), the NLRA allows parties to conduct the bargaining process free of government intrusion. *See Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 616 (1986), *cited in Cannon*, 33 F.3d at 883-84.

Nothing within the NLRA prohibits the Commission from determining that an emergency situation, as allowed for under Section 13-712(e)(6)(iii), includes strikes or work stoppages. By exempting a strike or work stoppage from being subject to a credit requirement for a period of 90 days, the Commission is recognizing that such an event will impact a carrier's ability to provision service.¹ 83 Ill.Adm.Code 732. Indeed, failure to include an exemption for strikes or work stoppages would violate the *Garmon* doctrine.

As noted above, the *Garmon* doctrine prevents conflicts between state and local regulation and the federal regulatory scheme embodied in the NLRA. *See Cannon*, 33 F.3d at 884. Here, absent Section 13-712, the specific credit requirements found in Part 732 would not exist. Without these Part 732 credit requirements, a carrier would be under no obligation to pay such credits in the event of a strike or work stoppage. Given

¹ It is Verizon's position that all strikes or work stoppages should be exempted from the credit requirements of Part 732. However, Verizon does not object to the 90 day exemption period found in Part 732.

this fact, there simply is no basis to conclude that because Part 732 **does** exist such credits must be paid even when a strike or work stoppage takes place. Such a result would violate the *Garmon* doctrine, as the Part 732 regulation would otherwise violate the balance between management and labor in their negotiations, to the undue benefit of labor.

Under the NLRA, state action will be preempted where it conflicts with the federal regulatory scheme. *Cannon*, 33 F.3d at 884. Here, exempting strikes and work stoppages from the payment of credits under Part 732 does not upset the federal regulatory scheme. Without Part 732, a carrier would not be required to pay such Part 732 credits during strike or work stoppage. Accordingly, an exemption for strikes or work stoppages under Part 732 is not preempted under federal law.

B. Section 13-712 Gives The Commission The Authority To Include Strikes And Work Stoppages Within The Definition Of “Emergency Situation”

Section 13-712(e)(6)(iii) authorizes the Commission to define the term “emergency situation.” 220 ILCS 5/13-712(e)(6)(iii). This Section provides in part that:

(6) Credits required by this subsection do not apply if the violation of a service quality standard:

...

(iii) occurs as a result of, or is extended by, *an emergency situation as defined in Commission rules*;

(*Id.*)(emphasis added). From this statutory provision, the Commission is given discretion to define the term “emergency situation.” Importantly, neither Section 13-712 nor any

other provision in the Act precludes the Commission from including strikes or work stoppages within the definition of emergency situation.

Illinois courts have stated that:

...although we are not bound by the Commission's interpretation of a statutory standard, due to an agency's experience and expertise, we should generally give substantial weight and deference to the interpretation of a statute by the agency charged with the administration and enforcement of the statute.

IBEW v. Illinois Commerce Comm'n, 2002 WL 1376128, 772 N.E. 2d 340 (citing *Illinois Power Co. v. Illinois Commerce Comm'n*, 111 Ill.2d 505, 511 (1986); *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 322 Ill.App.3d 846, 849-50 (2001)). Moreover, the primary objective of interpreting a statute is to ascertain and give effect to the intent of the legislature. *Metro Utility Co. v. Illinois Commerce Comm'n*, 262 Ill.App.3d 266, 274 (1994). Where statutory provisions are clear and unambiguous, the plain language as written must be given effect, without reading into it exceptions, limitations or conditions that the legislature did not express. *IBEW v. Illinois Commerce Comm'n*, 2002 WL 1376128, 772 N.E. 2d 340

In this instance, the language of Section 13-712(e)(6)(iii) is clear. The Commission has been given the discretion to determine what an emergency situation is for purposes of exempting a carrier from issuing credits. Based on its experience, expertise, and prior evidentiary records, the Commission has concluded that strikes and work stoppages fall within the definition of emergency situation. The Act contains no prohibition to the contrary.

In conclusion, there is no basis to claim that the Commission is precluded from including strikes or work stoppages within the definition of the term “emergency situation.” Section 13-712 of the Act does not preclude such a result and, in fact, gives the Commission substantial discretion in determining the definition of that term. Absent any legal authority or legislative history to the contrary, the Commission has the authority to include strikes and work stoppages within the definition of “emergency situation” for Part 732.

III. Conclusion

Based on the foregoing argument, Verizon urges the Commission to enter a ruling consistent with its position and establish a procedural schedule that contemplates the filing of testimony and evidentiary hearings.

Dated: August 19, 2002

Respectfully submitted,

VERIZON NORTH INCORPORATED AND
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CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I served a copy of the Brief of Verizon North Inc. and Verizon South Inc. upon the service list in Docket No. 02-0426 by email on August 19, 2002.

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